HON'BLE SHRI G.S. SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V. NAGARJUNA REDDY

Writ Petition No.3415 of 2003

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Between:

Captain G.G.K. Raju …Petitioner

And

Deputy Registrar of Co-operative
Societies, Hyderabad and others. …Respondents.

:: O R D E R ::

Counsel for the petitioner : Sri P. Srinivas

Counsel for respondent Nos.1 and 2 : Government Pleader Co-operation

Counsel for respondent No.3 : None

Counsel for respondent No.4 : None

13th July, 2007

Per G.S. SINGHVI, C.J.

In this petition, the petitioner has prayed for issue of a mandamus to respondent Nos.3 and 4 to act in accordance with order dated 26.4.1990 passed by Deputy Registrar of Co-operative Societies (Housing)/Divisional Co-operative Officer, Secunderabad Division

(respondent No.1) in A.R.C.No.92 of 1984 and to restore and deliver to him the title deed of Plot No.56, Survey No.157/8 of Thokatta Village, Secunderabad. He has further prayed for issue of a direction to the Sub-Registrar, Bowenpally, Secunderabad (respondent No.2) to cancel all entries of sale deed dated 28.3.1983, Book-I, Volume-6, Document No.611/1983 and to abstain from making any further entries regarding cancellation at the instance of respondent No.3. Another prayer made by the petitioner is for issue of a direction to respondent No.1 to prosecute respondent Nos.3 and 4 under Section 81 read with Section 83 of the Andhra Pradesh Co-operative Societies Act, 1964 (for short, 'the Act').

The above noted prayers made by the petitioner are founded on the following assertions:

1) that he is a member of Gun-Rock Enclave Co-operative Housing Society, Secunderabad (respondent No.3);
2) that after purchasing 35 acres land in Survey No.157/8 situated i n Thokatta Village, Secunderabad, respondent No.3 allotted plots to its members;
3) that he filed ARC No.92 of 1984 questioning the allotment of Plot No.190 in favour of respondent No.4 – Narne Ranga Rao;
4) that during the pendency of the case, respondent No.3 allotted plot No.56 to him and got the same registered;
5) that after sometime, respondent No.3 unilaterally executed deed of cancellation dated 31.3.1984, but the same was quashed by respondent No.1 vide award dated 26.4.1990 and respondent No.3 was directed to restore Plot No.56 to him after collecting the balance amount, if any;
6) that in the meanwhile, Plot No.56 was sold to Janaki Devi Minocha and Pradeep Minocha;
7) that the purchasers filed suit for injunction in the Court of I Assistant Civil Judge, City Civil Court, Secunderabad, which was registered as O.S.No.3122 of 1984. The suit was dismissed by

the trial court on 12.7.1989.

8) that O.S.No. 1796 of 1989 filed by him in the Court of III Additional Civil Judge, City Civil Court, Secunderabad for declaration and recovery of possession was decreed by the trial court on 22.1.1990;

9) that he obtained possession of the plot by filing E.P.No.13 of 1990 in the Civil Court;

10) that in compliance of the direction given by respondent No.1, Person-in-Charge of respondent No.3 executed deed dated 5.6.2000 in his favour by withdrawing the cancellation deed, and

11) that the newly elected body of respondent No.3 again executed cancellation deed dated 21.8.2000 and got the same registered in complete disregard of the award passed by respondent No.1 and the decree passed by the Civil Court and that on account of wrong entries in the books maintained by the registration authorities, he has not been able to obtain Encumbrance Certificate and raise loan for the purpose of construction.

Along with the writ petition, the petitioner filed copies of various deeds, judgment dated 22.1.1990 passed by III Additional Judge, City Civil Court, Secunderabad in O.S.No.1796 of 1989, warrant of execution dated 5.6.1990, panchanama dated 7.6.1990 and notice dated 15.6.2000 issued through the advocate.

In the counter filed by him on his own behalf and on behalf of respondent No.3, respondent No.4 – N. Ranga Rao has taken the following stand:

1) that he is duly elected Chairman of respondent No.3;

2) that the writ petitioner was expelled from the membership of respondent No.3 on 24.10.1989;

3) that the expulsion of the petitioner was nullified by respondent No.1 vide award dated 20.7.2002 passed under Section 62 (4) of

the Act in ARC No.28 of 2000;

4) that the award passed by respondent No.1 is subject matter of CTA No.113 of 2002 filed by respondent No.3 and the same has been stayed by the Andhra Pradesh Cooperative Tribunal (for short, 'the Tribunal');

5) that Plot No.56 was allotted to Captain Uma Raju and Plot No.190 was allotted to the petitioner;

6) that sale-deed dated 28.3.1983 executed in respect of Plot No.56 was, by mistake, registered in the petitioner's name, but, on the discovery of the mistake, the same was cancelled through document No.861/84 dated 31.3.1984;

7) that intimation regarding mistaken registration of document in respect of Plot No.56 in his favour was conveyed to the petitioner vide GRECHS/200/83, dated 16.12.1983 and vide letter dated 11.7.1984 he was informed about allotment of Plot No.190;

8) that the allotment of Plot No.190 had to be cancelled because the petitioner failed to pay the balance cost and development charges amounting to Rs.10,000/-;

9) that respondent Nos.3 and 4 are not parties to O.S.No.3122 of 1984, O.S.No.1796 of 1989 and E.P.No.13 of 1990;

10) that in compliance of award dated 26.3.1990/26.4.1990 passed by respondent No.1, Person-in-Charge of respondent No.3 executed deed dated 5.6.2000 in favour of the petitioner;

11) that the appointment of Person-in-Charge was challenged by respondent No.3 by filing an appeal before the Hon'ble Minister for Housing. The appeal was allowed on 22.6.2000 and the appointment of Person-in-Charge was set aside, and

12) that after setting aside of the appointment of Person-in-Charge, the managing committee of respondent No.3 passed resolution dated 1.7.2000 for cancellation of deed dated 5.6.2000. Accordingly, deed dated 21.8.2000 was executed by cancelling the earlier deed dated 5.6.2000.

Respondent No.4 also raised an objection to the maintainability of the writ petition by asserting that an effective alternative remedy is available to the petitioner under Section 70-A of the Act for execution of award passed in ARC No.90 of 1984.

The petitioner has filed rejoinder affidavit dated 19.9.2006 and averred that CTA No.133 of 2002 filed by respondent Nos.3 and 4 against order dated 20.7.2002 was dismissed by the Tribunal vide its order dated 26.10.2005. He has also referred to judgment dated 19.7.1999 passed by XI Junior Civil Judge, City Civil Court, Hyderabad in O.S.No.465 of 1990 – The Gunrock Enclave Coop. Housing Society v. Capt. G.G.K. Raju and judgment dated 20.6.2006 of Additional Chief Judge-cum-Judge, Family Court, Secunderabad in A.S.No.65 of 1990 and averred that in view of the concurrent findings recorded by the Courts of competent jurisdiction about his entitlement in respect of Plot No.56, the cancellation deed executed by respondent No.3 on 21.8.2000 is liable to be declared nullity.

Shri P. Srinivas argued that in view of award dated 26.4.1990 passed in ARC No.92 of 1984 and two judgments rendered by the XI Junior Civil Judge, City Civil Court, Hyderabad and Additional Judge-cum-Judge, Family Court, Secunderabad in O.S.No.465 of 1990 and A.S.No.65 of 1999 respectively, cancellation deed dated 21.8.2000 executed by respondent No.3 is liable to be treated as nullity and ignored because the said respondent does not have the jurisdiction, power or authority to take action in contravention of the direction given by respondent No.1.

Sri Srinivas emphasised that the order passed by respondent No.1 under Section 62 (4) of the Act is binding on respondent No.3 and, therefore, the second cancellation deed is liable to be quashed. Learned counsel conceded that on an earlier occasion, the petitioner had availed the statutory remedy by filing petition under Section 61 of the Act, but argued that he may not be compelled to again avail that remedy because the same has proved to be ineffective inasmuch as

respondent No.3 has blatantly and contemptuously ignored award dated 26.4.1990 passed by respondent No.1.

Learned Government Pleader for Co-operation argued that the writ petition should be dismissed because the petitioner failed to avail the statutory alternative remedy of reference available to him under Section 61 read with Section 62 of the Act and another remedy available under Section 70-A for execution of non-monetary orders. He further argued that the writ petition is liable to be dismissed because the petitioner has not challenged the second cancellation deed dated 21.8.2000 executed by respondent No.3.

We have considered the respective submissions. Article 226 of the Constitution of India, which empowers the High Courts to issue directions, orders or writs including writs of certiorari, mandamus, habeas corpus, quo warranto and prohibition, does not, in terms, contain any limitation in exercise of that power. However, during last 59 years, the superior courts have evolved several rules of self imposed restraint including the one that the High Court will not entertain the writ petition if an effective alternative remedy is available to the petitioner. In **A.V. Venkateshwaran v. R.S. Wadhwani**[1], the Constitution Bench of the Supreme Court, while reiterating the rule that the party who applies for the issue of a high prerogative writ should, before he approaches the Court, exhaust the other remedies open to him under the law is not one which bars the jurisdiction of the High Court to entertain the petition, but is a rule evolved by the Courts for the exercise of their discretion, observed as under:

> "The wide proposition that the existence of an alternative remedy is a bar to the entertainment of a petition under Art.226 of the Constitution unless (1) there was a complete lack of jurisdiction in the officer or authority to take the action impugned, or (2) where the order prejudicial to the writ petitioner has been passed in violation of the principles of natural justice and could, therefore, be treated as void or non est and that in all other cases, Courts should not entertain petitions under Art. 226, or in any event not grant any relief to such petitioners cannot be accepted. The two exceptions to the normal rule as to the effect of the existence of an adequate alternative

remedy are by no means exhaustive, and even beyond them a discretion vests in the High Court to entertain the petition and grant the petitioner relief notwithstanding the existence of an alternative remedy. The broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the court, and in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the court."

In **Thansingh Nathmal v. Superintendent of Taxes**[2], another Constitution Bench of the Supreme Court considered the question relating to exercise of discretion by the High Court in entertaining a writ petition despite the availability of alternative remedy and held:

"The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up."

In **Baburam v. Zilla Parishad**[3], the Supreme Court reiterated

the rule of alternative remedy in the following words:

> "When an alternative and equally efficacious remedy is open to a litigant he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of a statutory remedy does not affect the jurisdiction of the High Court to issue a writ. But, the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs and where such a remedy exists it will be a sound exercise of discretion to refuse to interfere in a writ petition unless there are good grounds therefor. But it should be remembered that the rule of exhaustion of statutory remedies before a writ is granted is a rule of self imposed limitation, a rule of policy, and discretion rather than a rule of law and the Court may therefore in exceptional cases issue a writ such as a writ of certiorari, notwithstanding the fact that the statutory remedies have not been exhausted."

Their Lordships then carved out the following two exceptions to the rule of alternative remedy:

1) where proceedings are taken before a Tribunal under a provision of law, which is ultra vires to the Constitution,
2) where the impugned order has been made in violation of the rules of natural justice.

In **Titaghur Paper Mills Co. Ltd. v. State of Orissa**[4], the Supreme Court stated the rule of alternative remedy in the following words:

> "Where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute alone must be availed of. Under the scheme of the Orissa Sales Tax Act, there is a hierarchy of authorities for granting redress. The petitioners had an equally efficacious alternative remedy by way of an appeal to the Prescribed Authority under sub-section (1) of Section 23, then a second appeal to the Tribunal under sub-section (3)(a) thereof, and thereafter in the event the petitioners get no relief, to have the case stated to the High Court under Section 24 of the Act. The Act provides for an adequate safeguard against an arbitrary or unjust assessment, such as right to prefer appeal under Section 23 (1) and to apply for stay of recovery under clause (a) of the second proviso to Section 13 (5). Thus the Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226."

In **Champa Lal v. I.T. Commissioner**[5], **J.M. & Co. v. Agricultural I.T. Officer, Assam**[6], **C.I.T. v. Ramendra Nath Ghosh**[7], **Swadeshi Cotton Mills Co. Ltd., v. Govt. of U.P.**[8], **Gujarat University v. N.U. Rajguru**[9], **State of H.P. v. Raja Mahendra Pal**[10], **L.L. Sudhakar Reddy v. State of A.P.**[11], **State of Bihar v. Jain Plastics & Chemicals Ltd.,**[12], **Harbanslal Sahnia v. Indian Oil Corporation Ltd.,**[13], **ABL International Ltd., v. Export Credit Guarantee Corporation of India Ltd.,**[14] the Supreme Court applied the rule of alternative remedy in different situations. In **Harbanslal Sahnia** (supra), the Supreme Court considered the situations in which the High Court can exercise power under Article 226 of the Constitution of India notwithstanding the availability of alternative remedy and held:

> "The rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See **Whirlpool Corpn. v. Registrar of Trade Marks {(1998) 8 SCC 1}**. The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

In **Central Coalfields Ltd. v. State of Jharkhand**[15], the Supreme Court approved the judgment of the High Court of Jharkhand, which refused to interfere with the order passed by the competent

authority under the Bihar and Orissa Public Demands Recovery Act, 1914 on the ground of availability of alternative remedy and observed:

> "……It is no doubt true that according to the appellant Company the certificate proceedings could not have been initiated under the Bihar and Orissa Public Demands Recovery Act, 1914, in view of the provisions of the Coal Bearing Areas (Acquisition and Development) Act, 1957, the Mines and Minerals (Regulation and Development) Act, 1957 and also the Coking Coal Mines (Nationalisation) Act, 1972. But it also cannot be overlooked that the action has been taken under the Bihar and Orissa Public Demands Recovery Act, 1914 and the appellant Company was directed to make payment. The said order is subject to appeal under Section 60 of the said Act. A reading of the order dated 17-11-1999 passed by the Certificate Officer makes it clear that before taking the action, an opinion of the Advocate General of the State of Bihar was sought by the respondent. Referring to the provisions of the Coking Coal Mines (Nationalisation) Act, 1972, the Advocate General opined that such amount could be claimed by the State Government from the appellant Company. Reference was made to Sections 6 and 7 of the said Act and it was observed that the State Government had power to make demand of rent from the appellant Company. In view of the above position, it cannot be said that the learned Single Judge as well as the Division Bench had committed an error of law in dismissing the petitions and appeals by allowing the appellant to avail of an alternative remedy of filing appeals……"

In our opinion, the petitioner's case does not fall in any of the exceptions carved out by the Supreme Court in **Baburam v. Zilla Parishad** or **Harbanslal Sahnia v. Indian Oil Corporation Ltd.** (supra) because he has neither pleaded violation of the rules of natural justice nor he has prayed for striking down any legislative instrument. He has also not prayed for striking down of any action taken in furtherance of legislation, which is ultra vires the provisions of the Constitution. Learned counsel has also not been able to put forward any extraordinary reason for making departure from the settled rule that the High Court will not entertain petition under Article 226 if an effective alternative remedy is available to the petitioner. The effectiveness of remedy available to the petitioner under Section 61 of the Act cannot be questioned by him because on an earlier occasion he had successfully availed that remedy. Therefore, we do not see

any justification to entertain the prayer made by the petitioner for issue of a mandamus to respondent No.3 to implement award dated 26.3.1990/26.4.1990.

We also agree with the learned Government Pleader that without challenging cancellation deed dated 21.8.2000, the petitioner is not entitled to seek relief in terms of the prayer made.

No other point has been argued.

In the result, the writ petition is dismissed.

G.S.SINGHVI, C.J.

13th July, 2007

C.V.NAGARJUNA REDDY, J.

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[1] AIR 1961 SC 1506
[2] AIR 1964 SC 1419
[3] AIR 1969 SC 556
[4] (1983) 2 SCC 433
[5] AIR 1970 SC 645
[6] AIR 1970 SC 1980
[7] (1972) 4 SCC 379
[8] (1975) 4 SCC 378
[9] AIR 1988 SC 66
[10] (1999) 4 SCC 43
[11] (2001) 6 SCC 634
[12] (2002) 1 SCC 216
[13] (2003) 2 SCC 107
[14] (2004) 3 SCC 553
[15] (2005) 7 SCC 492